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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOOG INC.,

Plaintiff,

v

SKYRYSE, INC., ROBERT ALIN
PILKINGTON, MISOOK KIM, and
DOES NOS. 1-50,

Defendants.

SKYRYSE, INC.,

Counterclaimant,

v

MOOG INC.,

Counterclaim-Defendant.

CASE NO. 2:22-cv-09094-GW-
MAR

**DEFENDANT SKYRYSE, INC.'S
NOTICE OF MOTION AND
MOTION FOR A TEMPORARY
STAY**

Complaint filed: March 7, 2022

Hearing: April 13, 2023

Time: 8:30 a.m.

Judge: Hon. George H. Wu

Location: Courtroom 9D 9th Floor

**TO THE ABOVE-CAPTIONED COURT, AND TO ALL PARTIES
AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that at 8:30 a.m. on April 13, 2023, or as soon thereafter as the matter may be heard before the Honorable Judge George H. Wu in Courtroom 9D of the United States District Court, Central District of California, located at 350 West 1st Street, Los Angeles, California 90012, Defendant and Counterclaimant Skyrise, Inc. will and hereby does move the Court for a six-month stay of this action in light of the government's parallel investigation.

This Motion is made on the grounds that:

- Proceeding with the civil action at this time, in light of the parallel investigation by the U.S. Attorney's Office ("USAO"), would squarely implicate Defendants Pilkington and Kim's Fifth Amendment rights and could cause severe prejudice to Skyrise, which may be deprived of discovery essential to its defenses in this case.
- All five *Keating* factors weigh in favor of a temporary stay: (1) it would not unfairly prejudice Moog, which has, at best, minimal interest in "proceeding expeditiously with this litigation," given that it received the emergency injunctive relief it claimed to need a year ago, and has yet to renew its motion for a preliminary injunction; (2) the risk of burden and prejudice to Skyrise is severe absent a stay; (3) a temporary stay would promote the efficient use of judicial resources and minimize the risk of inconsistent outcomes; (4) a stay would serve the interests of non-parties, including the government, third-party witnesses, and competitors; and (5) a stay would serve the public's interest in the expeditious resolution of any resulting criminal proceedings.

1 This Motion is based on this Notice, the accompanying Memorandum of
 2 Points and Authorities, the concurrently filed Declaration of Arman Zahoory (“Za-
 3 hoory Decl.”) and the exhibits attached thereto, the pleadings and records on file
 4 herein, and upon all other arguments and evidence that may be presented to this
 5 Court.

6 This motion is made following multiple conferences of counsel pursuant to
 7 L.R. 7-3, including conferences which took place on January 10 and February 22,
 8 2023.

9 Dated: March 15, 2023

Respectfully submitted,

LATHAM & WATKINS LLP

12 By /s/ Gabriel S. Gross

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1 I. INTRODUCTION

2 Plaintiff Moog, Inc. started this civil action over a year ago, alleging that two
 3 of its former employees, Defendants Alin Pilkington and Misook Kim, copied a large
 4 volume of files while still working at Moog, and conspired with their new employer,
 5 Defendant Skyrise, Inc., to misappropriate these alleged trade secrets. Moog filed
 6 its complaint in the Western District of New York with no notice and demanding
 7 immediate emergency relief. Unbeknownst to Defendants at the time, Moog also had
 8 been sharing information about the same conduct alleged in its complaint with the
 9 FBI, along with its own partisan theories of the case. On Moog's referral, the United
 10 States Attorney's Office here in the Central District of California had opened an
 11 investigation into these allegations. Defendants, however, did not learn of the gov-
 12 ernment's investigation or Moog's involvement in it until several months into this
 13 case, long after they had stipulated in good faith to the emergency relief Moog
 14 claimed to need: preserving and making available to Moog in discovery scores of
 15 electronic devices, mountains of information, and other "expedited discovery."

16 It has been nine months since Defendants learned of the government's inves-
 17 tigation, with which Skyrise has been fully cooperating. In that time, the investiga-
 18 tion has matured: the government has issued a series of grand jury subpoenas to
 19 Defendants and third parties, and has subpoenaed nearly all of the voluminous dis-
 20 covery materials produced in this case. At the same time, this civil action has pro-
 21 gressed. As of January, Skyrise has filed its Answer and Counterclaims; discovery
 22 has proceeded for nearly a year, resulting in numerous disputes over the sufficiency
 23 of both sides' responses; and depositions are imminent as Moog threatens to renew
 24 its motion for a preliminary injunction.

25 As the government's investigation and the civil action have converged,
 26 Mr. Pilkington and Ms. Kim face a dilemma. They have to choose between poten-
 27 tially waiving their Fifth Amendment privilege against self-incrimination to defend
 28

1 themselves in this civil action, and asserting that privilege and risking prejudice to
 2 their defense in this action, and Skyrise's as well. Mr. Pilkington and Ms. Kim have
 3 confirmed they will each invoke their constitutional right not to testify or provide
 4 further discovery in this action. But any time Mr. Pilkington or Ms. Kim – or any
 5 non-party witness – invokes the Fifth Amendment, this forecloses a valuable and
 6 potentially exculpatory source of evidence to Skyrise. Worse, any adverse inference
 7 the Court might grant arising from their refusal to testify in the civil action could be
 8 imputed to Skyrise, which would be unable to obtain the discovery it needs to fully
 9 defend itself. As long as this action continues in parallel with the government's in-
 10 vestigation, the individual defendants' Fifth Amendment interests will increasingly
 11 and irreconcilably collide with Skyrise's right and ability to fairly defend itself in
 12 this action.

13 Courts regularly stay civil proceedings in just these circumstances, where a
 14 criminal investigation implicates a defendant's Fifth Amendment rights in a pending
 15 civil case, and other defendants could be cut off from obtaining crucial discovery.
 16 Indeed, staying this action is the only sure way to prevent severe prejudice to Skyrise
 17 while also protecting Mr. Pilkington's and Ms. Kim's Fifth Amendment rights, pro-
 18 moting the efficient use of judicial resources, and advancing the interests of non-
 19 parties and the public. Skyrise recognizes that there are competing interests at play,
 20 including Moog's purported interest in an expeditious resolution of the civil action.
 21 Skyrise therefore is not asking for an indefinite stay, but instead is requesting a tem-
 22 porary one, for six months, renewable only on a showing of good cause. A six-month
 23 stay will protect all parties' interests while allowing the government ample time to
 24 advance its investigation. To safeguard the individual defendants' constitutional
 25 rights while preventing the most draconian and unfair consequences to Skyrise,
 26 Skyrise respectfully requests that the Court grant this Motion.

27

28

II. BACKGROUND

A. Initiation of this Action and the Parallel Government Investigation

Moog filed its complaint on March 7, 2022 in the Western District of New York alleging that two of its former employees, Mr. Pilkington and Ms. Kim (the “Individual Defendants”), while working at Moog, misappropriated trade secrets in a conspiracy with Skyrise, along with several other causes of action. (Dkt. 1.) At the same time, Moog moved for a temporary restraining order and preliminary injunction. (Dkts. 4, 5, 6.) Although Moog had not raised any of its concerns with Skyrise or the other Defendants before filing suit, all Defendants acted in good faith and promptly stipulated to the emergency relief Moog claimed it needed, namely to two orders on the “Production of Information, Data Preservation and Forensic Searches” and “Expedited Discovery Procedures and Briefing Schedule for Preliminary Injunction Motion.”¹ (Dkts. 25, 33.)

What Defendants did not know when they agreed to those stipulations was that, on Moog’s referral and with Moog’s cooperation, the U.S. Attorney’s Office for the Central District of California had opened an investigation into the very same facts underlying this action. On June 10, 2022, months after all Defendants stipulated to expedited discovery, counsel for Moog informed the Court of the “ongoing federal investigation into *the files taken from Moog that are the subject of this lawsuit*,”² confirming that the government’s investigation is premised on the same conduct on which Moog’s Complaint is based. (Dkt. 222-7.) Around the same time, the USAO served the Individual Defendants with grand jury subpoenas and advised their coun-

¹ The stipulated briefing and hearing schedule for Moog’s threatened preliminary injunction motion (Dkt. 33) is obsolete, as Moog has long suggested it will file, but has not yet filed, a different request for such injunctive relief.

² All emphasis in quotes has been added unless otherwise indicated.

1 sel that the Individual Defendants were the targets of a parallel criminal investiga-
 2 tion. (*See* Dkt. 264-2 at 32:24-33:3.) It was not until later that month that Defendants
 3 learned of Moog’s involvement in the government’s investigation.

4 Concerned about the implications of further discovery on their Fifth Amend-
 5 ment rights, on August 3, 2022 the Individual Defendants filed a motion to stay this
 6 action pending resolution of the parallel criminal investigation. (Dkt. 214.) The In-
 7 dividual Defendants’ motion described how further litigation of the civil case would
 8 force them to choose between waiving their Fifth Amendment privilege against self-
 9 incrimination in order to defend themselves, and asserting the privilege and risking
 10 severe prejudice in this action. (Dkt. 214-1 at 16-22.) Skyrise joined that motion and
 11 filed a supporting brief to highlight the prejudice it would suffer if the civil action
 12 proceeded without the Individual Defendants’ testimony. (Dkt. 241.) Skyrise
 13 pointed out the potentially draconian consequences to Skyrise of a decision by Mr.
 14 Pilkington and Ms. Kim to plead the Fifth, including that Skyrise could be subject
 15 to adverse inferences in the civil case while being deprived of exculpatory testimony
 16 from key witnesses. (*See id.* at 2-5.)

17 Recognizing that both the government’s investigation and the civil case were
 18 still in relatively early stages, Magistrate Judge McCarthy denied the motion, but
 19 without prejudice. He found that Defendants’ concerns about potential adverse in-
 20 ferences were, at that stage, “hypothetical, as Pilkington and Kim have not yet as-
 21 serted a Fifth Amendment privilege.” (Dkt. 259 at 3.) Judge McCarthy deemed it in
 22 all parties’ interest to allow the action to continue so Moog could satisfy its obliga-
 23 tion to identify its asserted trade secrets, “without (for now) requiring [Pilkington
 24 and Kim] to testify.” (*Id.* at 4.) The Court’s order expressly left the door open for
 25 Defendants to again seek a stay after more discovery had progressed, noting that
 26 “[o]nce Moog identifies the trade secrets and confidential information at issue, de-
 27 fendants may (or may not) decide that a stay of this action is necessary to protect
 28

1 their interests in light of the pending criminal investigation,” and “[w]hether such
2 relief would be appropriate is a question for another day.” (*Id.*)

3 **B. Venue Transfer and Other Relevant Developments**

4 In December 2022, the New York court granted Defendants’ motions to trans-
5 fer venue to this Court, in the district where virtually all of the conduct alleged in
6 Moog’s Complaint occurred and where the government’s investigation has been un-
7 folding. (*See* Dkt. 297.) It has now been more than six months since the transferor
8 court considered the appropriateness of a stay. In that time, the government has been
9 actively pursuing its investigation, including by issuing a series of grand jury sub-
10 poenas over the past several months. For example, Skyrise and several of its current
11 and former employees have responded to grand jury subpoenas, as have other third
12 parties. Most recently, counsel for Skyrise learned that the government served a
13 grand jury subpoena on iDS, the neutral forensic vendor that the parties selected by
14 stipulation, which has been maintaining a vast amount of electronic discovery from
15 this action. (Dkt. 25, ¶¶ 2-5.) In response, the Individual Defendants asserted their
16 Fifth Amendment privilege over all potentially responsive materials received from
17 Ms. Kim and Mr. Pilkington in iDS’s possession. (Zahoory Decl. Ex. A.)

18 Meanwhile, discovery in this action has marched onward, spawning numerous
19 disputes and motions. Over the last year, in accordance with the parties’ stipulation
20 and the transferor court’s orders, Moog received wide-ranging and virtually un-
21 bounded discovery into Skyrise’s documents and computer systems, amounting to
22 more than four terabytes of data it provided to iDS (equivalent to roughly 300 million
23 pages of text). The voluminous and one-sided nature of this discovery was the result
24 of Moog arguing it needed more information to identify its own trade secrets, which
25 Magistrate Judge McCarthy allowed before letting Defendants proceed with further
26 discovery. (Dkt. 205 at 3; *see also* Dkt. 206 (permitting Moog to file “motions re-

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lated to the discovery allegedly necessary to enable Moog to identify its trade secrets); Zahoory Decl. Ex. B at 26:4-14, 33:19-22 (ordering discovery into additional Skyrise electronic devices), 71:6-10 (allowing Moog “to serve third-party subpoenas in order to identify the trade secrets”).)

Despite all of this discovery, Moog still has not complied with the transferor court’s order compelling it to identify its alleged trade secrets with “precision and specificity,” and not just “by generic category,” describing “the specific characteristics of *each* trade secret,” including “a precise identification of software elements” such as “the specific lines of code or programs claimed to be secret.” (Dkt. 205 at 3-4.) Among other deficiencies, Moog’s February 21, 2023 trade secret identification describes its alleged trade secrets by generic category, and references more than 300,000 documents as “reflecting” its trade secrets, with no specificity as to what content in those documents is or is not a trade secret. Skyrise is no closer today than it was a year ago to knowing what trade secrets Moog will attempt to show it has established protectable rights in, and have been misappropriated in this action.

Skyrise has raised Moog’s deficient trade secret disclosure with Magistrate Judge Rocconi and plans to file a motion to enforce the transferor court’s order compelling a particularized trade secret identification. But that is just one of many pending and anticipated motions, as the parties discussed at the March 2 status conference. They also include Skyrise’s forthcoming motions to enforce the transferor court’s order on source code discovery; to compel supplemental interrogatory responses; and to compel the production of documents relating to Moog’s investigation and cooperation with the FBI and USAO; and Moog’s anticipated motions to enforce compliance with the stipulated TRO and “for potential monetary and/or other sanctions.” (Dkt. 365 at 8-13.)

At this stage of the civil action, the Individual Defendants are closer than ever to being required to testify at deposition. Moog has made clear that it still intends to

pursue a preliminary injunction, and requested a hearing be scheduled for September 2023. (Dkt. 365 at 3.) The parties' expedited discovery stipulation contemplates that each side will take depositions in advance of briefing and a hearing on the motion for a preliminary injunction. (Dkt. 33, ¶ 3.) That means Mr. Pilkington and Ms. Kim will undoubtedly be called for deposition by at least one party within the next six months. However, the Individual Defendants have confirmed that they will invoke their Fifth Amendment rights to avoid testifying when that occurs. Likewise, Skyryse understands that the Individual Defendants will broadly assert Fifth Amendment privilege and will not produce any further documents in the civil case while the government's investigation remains pending.

III. LEGAL STANDARDS

Following a venue transfer to a district court in the Ninth Circuit, the transferee court applies Ninth Circuit law to issues of federal law. *Newton v. Thomason*, 22 F.3d 1455, 1460 (9th Cir. 1994). Federal courts have inherent discretionary power to stay an action pending developments in parallel proceedings, *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (citing *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)), which makes the question of whether to grant a stay a federal-law issue. This Court should therefore apply Ninth Circuit law.

In the Ninth Circuit, courts exercise their discretion to stay civil proceedings in the face of parallel criminal proceedings "in light of the particular circumstances and competing interests involved in the case," which "means the decisionmaker should consider 'the extent to which the defendant's fifth amendment rights are implicated.'" *Keating*, 45 F.3d at 324-25 (quoting *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989)). "In addition, the decisionmaker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential

1 prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the
 2 proceedings may impose on defendants; (3) the convenience of the court in the man-
 3 agement of its cases, and the efficient use of judicial resources; (4) the interests of
 4 persons not parties to the civil litigation; and (5) the interest of the public in the
 5 pending civil and criminal litigation.” *Id.*

6 **IV. THE COURT SHOULD STAY THIS ACTION TEMPORARILY**
 7 **WHILE THE PARALLEL GOVERNMENT INVESTIGATION IS**
 8 **PENDING.**

9 A six-month stay of this action during the government’s ongoing investigation
 10 is necessary to protect both the Individual Defendants’ Fifth Amendment rights and
 11 Skyryse’s right to a full and fair opportunity to defend itself against Moog’s claims,
 12 and will not unduly prejudice Moog.

13 **A. Proceeding with this civil action would squarely implicate**
 14 **Defendants’ Fifth Amendment and due process rights.**

15 Courts generally recognize that it is appropriate to stay a civil case pending
 16 parallel criminal proceedings because “[i]f discovery moves forward, [the] defend-
 17 ant will be faced with the difficult choice between asserting [his] right against self-
 18 incrimination, thereby inviting prejudice in the civil case, or waiving those rights,
 19 thereby courting liability in the civil case.” *Jones v. Conte*, No. 04-cv-5312-SI, 2005
 20 WL 1287017, at *1 (N.D. Cal. Apr. 19, 2005) (quoting *Javier H. v. Garcia-Botello*,
 21 218 F.R.D. 72, 75 (W.D.N.Y. 2003)). Fifth Amendment concerns particularly war-
 22 rant a stay “[w]hen simultaneous civil and criminal proceedings involve ‘the same
 23 or closely related facts,’” and “[s]ome courts have gone so far as to recognize the
 24 extent of the overlap as the ‘most important factor.’” *McCormick v. Rexroth*, No. 09-
 25 cv-4188-JF, 2010 WL 934242, at *2 (N.D. Cal. Mar. 15, 2010) (citation omitted).
 26 Likewise, a stay is appropriate where individual Fifth Amendment concerns may
 27 “greatly prejudice” another defendant “in [its] ability to meaningfully defend itself
 28 in the civil matter,” thereby threatening the civil defendant’s right to due process and

1 a fair defense. *Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum Fin., Inc.*, No.
 2 09-cv-0954-FCD, 2009 WL 2136986, at *3 (E.D. Cal. July 15, 2009).

3 1. The overlapping facts underlying the civil action and the
 4 government's investigation put the Individual Defendants' Fifth
 5 Amendment rights squarely at issue.

6 The facts underlying the civil action and the government's investigation, to
 7 Skyrise's knowledge, are identical. As Moog acknowledged in a letter to the trans-
 8 feror court, the "ongoing federal investigation" concerns "the files taken from Moog
 9 *that are the subject of this lawsuit*" (Dkt. 222-7), and Moog has since admitted in
 10 response to the New York court's questioning that it referred the case to the govern-
 11 ment. (Zahoory Decl. Ex. C.) Since then, as the civil litigation has progressed, the
 12 government has subpoenaed virtually every piece of discovery produced by all par-
 13 ties. And, although Moog has failed to respond to Skyrise's discovery request for
 14 all of Moog's communications with the government, the limited discovery provided
 15 confirms Moog has kept the government informed of Moog's own investigation
 16 from the start. (*See, e.g.*, Dkt. 214-4 at 3.) The government's investigation, instigated
 17 by Moog's referral, involves "the same or closely related facts" as the present action.

18 Given the overlap between the civil suit and the USAO's investigation, the
 19 impending depositions and continued discovery obligations in this case plainly im-
 20 plicate the Individual Defendants' Fifth Amendment rights. The Individual Defend-
 21 ants have already asserted the Fifth Amendment privilege in response to the subpoe-
 22 nas they received from the government (Dkt. 264-2 at 34:5-7) and, in this case, in
 23 connection with the electronic devices they produced to iDS. (Zahoory Decl. Ex. A;
 24 *see also* Dkt. 268 at 6-7.) Indeed, if civil discovery proceeds, and Ms. Kim or
 25 Mr. Pilkington is called for deposition, they have indicated that they will continue
 26 to invoke the Fifth Amendment and will not testify, thereby exposing them (and
 27 Skyrise) to severe and undue prejudice in the civil case. The Fifth Amendment in-
 28 terest is particularly strong where, as here, the Individual Defendants have not yet

1 testified and have therefore not waived their Fifth Amendment rights. *See Jones*,
 2 2005 WL 1287017, at *1 (“In the current case, defendant has not submitted deposi-
 3 tion testimony or sworn statements in any ‘proceeding’; therefore, defendant retains
 4 full protection under the Fifth Amendment.”).

5 Under such circumstances, courts have recognized that staying a civil pro-
 6 ceeding best serves the important constitutional concerns at issue. For example, in
 7 *SEC v. Nicholas*, the court considered a motion to stay a civil enforcement action
 8 until the resolution of a pending criminal case concerning the same underlying con-
 9 duct. 569 F. Supp. 2d 1065, 1067 (C.D. Cal. 2008). One defendant had already
 10 pleaded the Fifth Amendment in response to a subpoena to testify before the SEC,
 11 and represented that he would assert the privilege again when called for a civil dep-
 12 osition. *Id.* at 1070. Finding that “the civil and criminal cases [were] inextricably
 13 intertwined” and that allowing the civil and criminal proceedings to run in parallel
 14 would “undoubtedly implicate the Fifth Amendment rights of the parties and wit-
 15 nesses,” the court granted a complete stay of the civil proceedings. *Id.* at 1069-70.
 16 That reasoning applies here.

17 2. The Individual Defendants’ Fifth Amendment concerns extend
 18 to Skyryse and implicate its due process rights.

19 The Individual Defendants are not the only ones who would be unduly preju-
 20 diced in the civil suit by their invocation of the Fifth Amendment. Skyryse would as
 21 well. Although it does not have a Fifth Amendment right against self-incrimination,
 22 the risk of prejudice to a corporation like Skyryse is substantial. This is because
 23 testimony from individuals, including Mr. Pilkington and Ms. Kim, is fundamental
 24 to Skyryse’s defense, yet those witnesses undoubtedly will assert their Fifth Amend-
 25 ment rights as long as the criminal proceeding lasts. *See Micron Tech., Inc. v. United*
 26 *Microelectronics Corp.*, No. 17-cv-06932-MMC, 2019 WL 3037542, at *2 (N.D.
 27 Cal. July 11, 2019) (finding, where individual defendants in criminal action were
 28

1 “likely” to be called as witnesses in parallel civil case, that “the risk of prejudice to
 2 [corporate defendants] arising from an inability to obtain testimony from individuals
 3 who have the right not to incriminate themselves is substantial”). As discussed fur-
 4 ther below, Skyryse would be unable to effectively call Mr. Pilkington and Ms. Kim
 5 as witnesses, and could also be saddled with any adverse inference drawn against
 6 the Individual Defendants in the civil action as a result of their pleading the Fifth
 7 Amendment. Because the individual defendants’ Fifth Amendment interests are
 8 squarely implicated by further proceedings in this action, the likely prejudice to
 9 Skyryse’s due process rights is severe. *See generally infra* at Section IV.C.

10 3. The status of the government’s investigation warrants a
 11 temporary stay.

12 That a grand jury has yet to return an indictment weighs in favor of a tempo-
 13 rary stay. It is well established that the possibility of criminal prosecution is all that
 14 is necessary for the Fifth Amendment privilege to be invoked. *Matter of Seper*, 705
 15 F. 2d 1499, 1501 (9th Cir. 1983). Indeed, courts regularly grant temporary stays of
 16 a civil action even when indictments have not been returned in a parallel criminal
 17 investigation. The court’s decision in *De La O v. Arnold-Williams* is instructive. No.
 18 04-cv-0192-EFS, 2005 WL 8158924 (E.D. Wash. June 21, 2005). There, defendants
 19 moved to stay a civil action in light of a government investigation concerning
 20 whether the same underlying conduct had violated federal fraud laws. *Id.* at *2.
 21 Plaintiffs opposed the stay on the grounds that “no indictments [had] been filed,” but
 22 the court found that “the federal investigation is still active as the U.S. Attorney’s
 23 Office sent ‘grand jury letters’ to two Defendants in this action” and that “a four-
 24 month stay is of sufficient length” to allow the government to proceed with the grand
 25 jury process and “discern whether indictments will be filed.” *Id.* at *3, *6.

26 Likewise, here, the government’s investigation remains active and is more
 27 mature than it was when the transferor court considered Defendants’ motion to stay
 28

1 six months ago. The government has subpoenaed nearly every piece of civil discov-
 2 ery in this case, and grand jury subpoenas were still being issued to non-parties as
 3 recently as last week. Under such circumstances, the lack of an indictment does not
 4 preclude a stay; rather, it confirms that a stay is appropriate to preserve the integrity
 5 of the proceedings while the government conducts its investigation. *See De La O*,
 6 2005 WL 8158924, at *6; *Wroth v. City of Rohnert Park*, No. 17-cv-05339-JST,
 7 2018 WL 888466 (N.D. Cal. Feb. 14, 2018) (finding lack of indictment did not pre-
 8 clude a temporary stay because defendants “still have legitimate concerns about po-
 9 tential impending criminal prosecution” and temporary nature of stay would
 10 “lessen[] the prejudice to Plaintiffs”).

11 In light of the foregoing, Skyrise respectfully requests that the Court grant a
 12 temporary stay of six months, which would protect Defendants’ constitutional rights
 13 while the government proceeds with its investigation and determines whether to
 14 bring charges. A six-month stay would also prevent the Individual Defendants from
 15 being forced to plead the Fifth Amendment to avoid testifying at depositions in the
 16 civil action, and likely in connection with Moog’s renewed preliminary injunction
 17 motion, which Moog has indicated it plans to file by September. (Dkt. 365.) After
 18 six months’ time, the stay would expire unless a party successfully moves to renew
 19 it upon a showing of good cause (for example, if the government’s investigation
 20 remains active and the Individual Defendants’ and other witnesses’ Fifth Amend-
 21 ment rights are still at issue).

22 **B. A temporary stay will not unfairly prejudice Moog.**

23 In determining whether a stay is appropriate in light of the particular circum-
 24 stances, courts in the Ninth Circuit consider “the interest of the plaintiffs in proceed-
 25 ing expeditiously with this litigation or any particular aspect of it, and the potential
 26 prejudice to plaintiffs of a delay.” *Keating*, 45 F.3d at 25. Here, Moog’s conduct
 27 confirms that this factor weighs in favor of granting a stay.

1 Moog has, at best, minimal interest in “proceeding expeditiously with this lit-
 2 igation” at this stage, *id.*, for several reasons. First, Moog promptly received by stip-
 3 ulation the very “emergency” relief it claimed to need upon filing its lawsuit with no
 4 notice to Defendants. (Dkt. 25, 33.) Just days after Moog filed this suit, Defendants
 5 stipulated in good faith to Moog’s requested emergency relief, including by agreeing
 6 to “refrain from using, accessing, disclosing, copying, or transmitting, for any pur-
 7 pose, any non-public information” belonging to Moog. (Dkt. 25.)

8 Second, Moog’s litigation conduct over the past year underscores its lack of
 9 urgency in moving the case forward, despite what it may claim today. Moog made
 10 every argument at its disposal to delay identifying its alleged trade secrets as long as
 11 possible, until this Court ordered it to finally make that disclosure, a year after it had
 12 filed suit. Until then, Moog was content to wait as Defendants (and third parties)
 13 produced terabytes of data in discovery, not knowing what Moog would claim is,
 14 and is not, a trade secret. And, when Moog did finally provide a trade secret identi-
 15 fication, it did not come close to complying with the Court’s order to define its trade
 16 secrets “with particularity,” all but guaranteeing further disputes and motions over
 17 this essential aspect of any trade secret case. *Supra* at 6. Moog’s long-delayed (and
 18 facially deficient) trade secret identification, combined with its willingness to take a
 19 year’s worth of discovery first, betrays any sense of urgency in resolving this case.

20 Third, despite threatening to do so for months before two courts, Moog has
 21 yet to renew its motion for a preliminary injunction. Even as it shared with this Court
 22 its plans to file a new motion for injunctive relief, Moog betrayed its lack of urgency,
 23 asking the Court to delay scheduling a hearing on that motion for another six months.
 24 (Dkt. 365 at 3.)

25 Any possible prejudice to Moog if a stay is granted is minimal. Skyrise seeks
 26 a temporary, six-month stay, which will not be renewed unless good cause is shown.
 27 A temporary stay minimizes the risk that witnesses’ memories might fade, which is
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1 further mitigated by the government’s active investigation (and any related proceed-
 2 ings), which will preserve witnesses’ testimony. *See Micron Tech.*, 2019 WL
 3 3037542, at *3 (finding “risk of fading memories” lessened where “key witnesses in
 4 the civil case are likely to be called as key witnesses in the criminal case, thereby
 5 preserving their testimony”). Moreover, there is no significant risk of documentary
 6 evidence being lost, given the parties’ stipulation requiring the preservation of elec-
 7 tronically stored information. (Dkt. 25 at ¶¶ 1-9; Dkt. 28.) Any concern that relevant
 8 evidence will be lost is also mitigated by the fact that an active criminal proceeding
 9 will “ensure the retention of important evidence and documents.” *SEC v. Alexander*,
 10 No. 10-cv-04535-LHK, 2010 WL 5388000, at *4 (N.D. Cal. Dec. 22, 2010).

11 Finally, Moog itself has proposed staying the civil action while the govern-
 12 ment’s investigation proceeds. In a draft stipulated preliminary injunction that Moog
 13 proposed to all parties on March 1, 2023, Moog seeks in part virtually the same relief
 14 it obtained on an emergency basis through the parties’ earlier stipulation (Dkt. 25)
 15 and proposes that “the Parties agree to stay all discovery in the case, pending reso-
 16 lution of the ongoing parallel criminal proceedings.” While the vagueness and over-
 17 reaching nature of that proposal, as currently written, is not acceptable to Skyryse
 18 for other reasons, Moog’s willingness to stay civil proceedings on its own terms
 19 underscores the lack of prejudice it would experience from a stay.

20 **C. The burden on and prejudice to Skyryse would be severe absent a**
 21 **stay.**

22 While the risk of prejudice to Moog resulting from a stay is minimal, Skyryse
 23 would suffer severe and undue prejudice absent a stay. Skyryse will be unable to
 24 fully and fairly defend itself in this action as long as the government’s investigation
 25 remains active. Moog’s complaint is centered on allegations of misconduct by the
 26 Individual Defendants when they worked at Moog. (*See, e.g.*, Dkt. 1 ¶ 172 (“Kim
 27 copied and delivered to Pilkington and Skyryse the data files that she copied from
 28

1 Moog containing Moog's trade secrets and confidential and proprietary infor-
 2 mation.”.) Skyryse has never wanted, needed, or tried to obtain any of Moog's al-
 3 leged trade secret information from Mr. Pilkington or Ms. Kim, neither of whom
 4 worked for Skyryse for longer than six months, or from any other source. Conse-
 5 quently, Skyryse's defense will rely on discovery from the Individual Defendants,
 6 including their testimony and any further document productions. If Ms. Kim and
 7 Mr. Pilkington invoke their Fifth Amendment rights and do not testify or produce
 8 additional documents, as they have indicated is their intent as long as the govern-
 9 ment's investigation remains open, *supra* at 7, Skyryse will be unable to obtain cru-
 10 cial exculpatory discovery.

11 The government's investigation is likely to implicate the Fifth Amendment
 12 rights of other witnesses whose testimony would also be valuable to Skyryse's de-
 13 fense. Courts have found that a corporation is “greatly prejudiced in [its] ability to
 14 meaningfully defend itself in the civil matter” where it is unable to obtain testimony
 15 from current or former officers or employees who have pleaded the Fifth Amend-
 16 ment. *Taylor*, 2009 WL 2136986, at *3; *see also Micron Tech.*, at *2 (citing *Mr.*
 17 *Dee's, Inc. v. Int'l Outsourcing Servs., LLC*, No. 08-cv-457, 2008 WL 4853601, at
 18 *1 (E.D. Wis. Nov. 3, 2008)). Moog's scattershot complaint implicates numerous
 19 former Moog employees whose testimony is likely to be important to Skyryse's de-
 20 fense, but who also might invoke their right against self-incrimination. For example,
 21 Moog's Complaint tries to place blame on senior executives who left Moog for
 22 Skyryse (and who no longer work at Skyryse), including Gonzalo Rey and Tim Bap-
 23 tist, whom Moog accuses of being “well aware of the value Moog placed on its trade
 24 secrets” and of working to recruit Moog employees to join Skyryse. (Dkt. 1 ¶¶ 93-
 25 98, 170.) Skyryse's defense is likely to require their testimony given Moog's allega-
 26 tions about their conduct. Given the considerable overlap in issues between the civil
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1 action and the government’s investigation, there is a high likelihood that those indi-
 2 viduals, too, may plead the Fifth Amendment to avoid providing civil discovery and
 3 testimony.

4 The court’s opinion in *Micron Technology, Inc. v. United Microelectronics*
 5 *Corp.* is illuminating. No. 17-cv-06932-MMC, 2019 WL 3037542 (N.D. Cal. July
 6 11, 2019). There, the court considered two corporate defendants’ motion to stay a
 7 civil action for trade secret misappropriation pending resolution of a criminal case
 8 based on the same allegations. *Id.* at *1. Just as Moog’s accusations against Skyrise
 9 are based on the actions of Mr. Pilkington and Ms. Kim, the corporate defendants’
 10 alleged wrongful acts in *Micron Technology* were coextensive with the actions of
 11 individual defendants, whom the court found were likely to be called as witnesses
 12 along with other “officers and employees” of the corporate defendants. *Id.* at *2. The
 13 court observed that the corporate defendants “undoubtedly will need to rely on tes-
 14 timony from” those individuals, “who undoubtedly will assert their respective priv-
 15 ileges against self-incrimination as long as the criminal case is ongoing.” *Id.* Ac-
 16 cordingly, the court found that “the risk of prejudice to [the corporate defendants]
 17 arising from an inability to obtain testimony from individuals who have the right not
 18 to incriminate themselves is substantial.” *Id.* The court also noted that without a stay,
 19 the corporate defendants “would be put in the position of having to publicly dis-
 20 close” in civil court filings “the basis of their respective defenses,” which disclosures
 21 “would likely be in excess of that to which the government would be entitled under
 22 the Federal Rules of Criminal Procedure.” *Id.* at *3. In light of the significant preju-
 23 dice to and burden upon the corporate defendants, along with the other *Keating* fac-
 24 tors, the court granted the stay. Likewise, Skyrise would suffer substantial prejudice
 25 from its inability to obtain testimony and other discovery from the Individual De-
 26 fendants and non-party witnesses who are likely to invoke their Fifth Amendment
 27 rights while the government’s investigation is ongoing.

28

Equally, if not more, prejudicial to Skyrise is the possibility that, if a stay is not granted and the Individual Defendants or other non-party witnesses invoke the Fifth Amendment, any adverse inference drawn against them in the civil case would also be imputed to Skyrise, either directly or indirectly by a jury that may struggle to disentangle the defendants at trial. In civil proceedings, unlike in a criminal case, a party's invocation of his or her Fifth Amendment rights may result in an adverse inference against that party. *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 911 (9th Cir. 2008). Additionally, courts have found that any such adverse inference drawn against a party invoking the privilege could also be imputed to a co-party. *See Williams v. Kohl's Dept. Stores, Inc.*, No. 19-cv-397-JGB, 2020 WL 3882953, at *20-22 (C.D. Cal. June 16, 2020) (citing *LiButti v. United States*, 107 F.3d 110, 121 (2d Cir. 1997)). Here, an adverse inference held against Skyrise would be exceedingly prejudicial, particularly because the Individual Defendants' invocation of the Fifth Amendment would prevent Skyrise from obtaining potential exculpatory evidence in discovery. Granting a stay of the civil proceedings is the only way to avoid such a draconian outcome.

Skyrise is likely to be greatly prejudiced in its ability to meaningfully defend itself if the civil action proceeds at this time. This factor weighs in favor of a stay.

D. A temporary stay would promote the efficient use of judicial resources.

Staying the civil action temporarily will conserve judicial resources and expedite resolution of the civil case when it resumes. Where discovery in a civil action is complex, heavily disputed, and likely to require substantial judicial resources, courts regularly stay those proceedings pending resolution of a parallel criminal proceeding. *See Nicholas*, 569 F. Supp. 2d at 1069 (granting stay where civil discovery would "require the devotion of substantial resources both by the parties, in reviewing documents, propounding and responding to discovery, and taking and defending

1 depositions, and by the Court in resolving the myriad of disputes that are likely to
2 arise”). Here, a stay is particularly appropriate given the complexity of discovery in
3 this action and the numerous disputes that have already arisen. (*See* Dkt. 365 (de-
4 scribing at least three fully briefed motions and ten anticipated discovery motions).)
5 Both Moog and Skyrise already have contacted Magistrate Judge Rocconi’s cham-
6 bers to resolve a total of four discovery disputes, with others brewing. Resolving all
7 of these disputes will require the Court to expend substantial resources, which
8 weighs in favor of a stay pending the government’s investigation.

9 As heavily contested as discovery has been to date, the parties’ discovery dis-
10 putes will only proliferate as the Individual Defendants, and potentially other wit-
11 nesses, continue to assert their Fifth Amendment privileges. *See, e.g., Waymo LLC*
12 *v. Uber Techs., Inc.*, No. 17-cv-00939-WHA, 2017 WL 2123560, at *5 (N.D. Cal.
13 May 15, 2017) (noting in a civil trade secret case that “[t]he history of this litigation
14 has been and continues to be wrought with contentious discovery disputes” caused
15 in part by individual defendant having “broadly asserted his Fifth Amendment priv-
16 ilege in these proceedings”). Indeed, the Individual Defendants’ invocation of the
17 Fifth Amendment has already triggered discovery disputes. On July 29, 2022, the
18 Individual Defendants instructed iDS to suspend access to the twenty-three elec-
19 tronic devices they had produced, in an effort to avoid inadvertent waiver of their
20 Fifth Amendment privileges. (Dkt. 229-13.) Moog subsequently filed an emergency
21 motion to restore access to the iDS protocol, while the Individual Defendants sepa-
22 rately moved the Court to sustain their decision to claw back their devices. (Dkt.
23 228, 229.) That dispute is only an example of the types of challenges that are likely
24 to arise if the civil suit and the government’s investigation continue in parallel. Stay-
25 ing the action while the investigation plays out would stave off such disputes and
26 conserve judicial resources.

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1 Furthermore, a stay will ensure that the common underlying issues can be ef-
 2 ficiently litigated without the risk of inconsistent outcomes. Since there is overlap
 3 between the alleged conduct underlying the civil action and the government’s inves-
 4 tigation, issues of fact resolved in any resultant criminal proceeding may bear di-
 5 rectly on this civil action. Under such circumstances, courts have found that a stay
 6 of the civil case is warranted to avoid competing proceedings resulting in potentially
 7 inconsistent treatment of the same issues of fact. For example, in *Nicholas*, the court
 8 found the threat of inconsistent outcomes was “particularly acute . . . if the Court
 9 and/or the jury is asked to resolve issues that are common between both actions.”
 10 569 F. Supp. 2d at 1070. Noting that “collateral estoppel in the criminal case may
 11 expedite the resolution of the civil case,” the court determined that “any law and
 12 motion with respect to the underlying issues, conduct and charges should be litigated
 13 in a single proceeding, not competing ones.” *Id.* at 1070-71. Accordingly, the court
 14 granted a stay of the civil action, which is the appropriate outcome here as well.

15 After the government’s investigation and any related criminal proceedings
 16 have been resolved, the parties will be able to litigate the civil case in a more stream-
 17 lined and efficient manner. *See Jones*, 2005 WL 1287017, at *2 (“Staying the case
 18 makes efficient use of judicial resources by ‘insuring that common issues of fact will
 19 be resolved and subsequent civil discovery will proceed unobstructed by concerns
 20 regarding self-incrimination.’”); *Wroth*, 2018 WL 888466, at *3 (“The resolution of
 21 the criminal matter may narrow the scope of civil discovery.”). A stay is especially
 22 conducive to the efficient use of judicial resources given that, despite a year tran-
 23 spiring, this civil action is still in its early stages with Moog having only recently
 24 attempted to identify its trade secrets, and no trial date having been set. *See Alexan-*
 25 *der*, 2010 WL 5388000, at *5 (finding that staying “a parallel civil proceeding in its
 26 early stages may prove more efficient in the long-run” because disposition of the
 27
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1 criminal action may “narrow the issues and streamline discovery in the civil pro-
 2 ceeding”). Skyryse filed its Answer and counterclaims less than two months ago
 3 (Dkt. 350), Moog has yet to admit or deny the allegations in Skyryse’s counter-
 4 claims, and discovery for many months has been confined in sequence and content
 5 by orders of the transferor court. Under these circumstances, justice will be best
 6 served by allowing the government’s investigation to play out so that when this ac-
 7 tion does resume, it can proceed without threatening the Individual Defendants’ con-
 8 stitutional rights and without depriving Skyryse of its ability to fairly defend itself.

9 Staying this action temporarily while the government’s investigation proceeds
 10 will maximize judicial efficiency, ensure consistent outcomes, and expedite the res-
 11 olution of the civil action when it resumes. This factor weighs in favor of a stay.

12 **E. A stay would serve the interests of the government, non-party**
 13 **witnesses, and the industry.**

14 The interests of third parties, including the government, would be served by a
 15 temporary stay of this action while the government investigation proceeds.

16 *First*, the government’s interests would be served by a stay. The government
 17 “has an interest in an unimpeded criminal investigation that favors a stay.” *In re*
 18 *Zinnel*, No. 12-cv-00249-MCE, 2013 WL 1284339, *8 (E.D. Cal. Mar. 28, 2013).
 19 While Skyryse understands that the government plans to take no formal position on
 20 this Motion, a stay of the civil action would prevent, at least temporarily, witnesses
 21 in both sets of proceedings being required to testify twice or potentially giving in-
 22 consistent testimony, either of which could unnecessarily complicate the govern-
 23 ment’s investigation. Staying the civil action temporarily will allow the government
 24 to control discovery in the criminal proceeding without these complications, and will
 25 permit it sufficient time to complete the grand jury process and decide whether to
 26 seek an indictment.

1 *Second*, a stay would serve the interests of non-party witnesses in both the
 2 civil and the criminal proceedings. Moog has issued civil subpoenas to numerous
 3 third parties, including Hummingbird Aero, LLC and its employee Mr. Hyde, former
 4 Skyryse employees Mr. Rey and Mr. Baptist, and third-party contractor Ms. Bird.
 5 Given their alleged involvement in the conduct underlying the Complaint and the
 6 parallel government investigation, these entities and individuals are also potential
 7 witnesses in any criminal case. Their Fifth Amendment rights may therefore be im-
 8 plicated if the civil action is not stayed, just as the Individual Defendants' rights are.
 9 Even if their constitutional rights are not directly at issue, these individuals certainly
 10 have an interest in streamlining the proceedings and in limiting the number of times
 11 they may be called to testify. A stay of the civil action would promote these interests.

12 *Third*, to the extent that this case implicates the interests of competitors and
 13 other participants in the highly automated and autonomous aircraft industry, those
 14 interests will be advanced by the pending criminal investigation, no less than by the
 15 civil action. Given Moog's allegations about Defendants' purportedly unfair busi-
 16 ness practices in the "unmanned aircraft market" (Dkt. 1 ¶ 8), companies that cur-
 17 rently compete in that market may have an interest in the resolution of Moog's
 18 claims. However, in such circumstances, at least one court has found that the inter-
 19 ests of non-party competitors are "advanced by the pending criminal prosecution,
 20 which seeks to protect both the public's interest in protecting . . . trade secrets as
 21 well as the integrity of the [relevant] market." *Micron Tech.*, 2019 WL 3037542, at
 22 *3.

23 **F. A stay would serve the public interest.**

24 In addition to the interests of the government and other non-parties, the inter-
 25 ests of the public at large would be served by a stay of the civil case. Where there
 26 are parallel criminal and civil proceedings, courts generally recognize that the public
 27 has a stronger interest in the integrity and efficient resolution of the criminal matter.
 28

1 *See Alexander*, 2010 WL 5388000, at *6 (finding “the criminal case is of primary
2 importance to the public,” while the civil case “is not of an equally pressing nature”);
3 *Jones*, 2005 WL 1287017, at *2 (“the public’s interest in the integrity of the criminal
4 case is entitled to precedence over the civil litigant”). The civil proceeding is sec-
5 ondary in importance particularly in this case, where Moog has already received the
6 preliminary relief it claimed to need by stipulation, and copious relevant evidence
7 has been preserved. The public’s interest in the integrity of the government’s inves-
8 tigation and any subsequent criminal proceedings, and in safeguarding the Fifth
9 Amendment rights of the defendants, should take a higher priority over pressing the
10 civil action forward for its own sake. This factor weighs in favor of a temporary,
11 renewable stay.

12 **V. CONCLUSION**

13 For the foregoing reasons, Skyrise respectfully requests that the Court grant
14 a temporary stay of this action for six months, without prejudice to any party seeking
15 to renew the stay if there is good cause to do so.

1 Dated: March 15, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant and Counterclaimant Skyryse, Inc., certifies that this brief contains **6,999** words, which complies with the word limit of L.R. 11-6.1.

Dated: March 15, 2023

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